

ORIGINAL



0000097632

**BEFORE THE ARIZONA POWER PLANT A.  
TRANSMISSION LINE SITING COMMITTEE**

IN THE MATTER OF THE APPLICATION  
OF SEP-II, LLC, IN CONFORMANCE  
WITH THE REQUIREMENTS OF  
ARIZONA REVISED STATUTES SECTION  
40-360, et seq., FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY  
AUTHORIZING THE MESQUITE SOLAR  
GEN-TIE 230KV TRANSMISSION LINE,  
ORIGINATING AT THE PROPOSED  
MESQUITE SOLAR PHOTO VOLTAIC  
GENERATING FACILITY IN SEC. 18,  
T.1S., R.6W. G&SRB&M, MARICOPA  
COUNTY, AND TERMINATING AT THE  
EXISTING MESQUITE GENERATING  
STATION 230KV SWITCHYARD IN SEC.  
15, T.1S., R.6W. G&SRB&M, IN  
MARICOPA COUNTY, ARIZONA.

Docket No. L-00000KK-09-0299-00147

Case No. 147

Arizona Corporation Commission

**DOCKETED**

**JUN 11 2009**

DOCKETED BY

ARIZONA CORPORATION  
COMMISSION

JUN 11 P 1:47

RECEIVED

**PROCEDURAL ORDER**

An application for a Certificate of Environmental Compatibility was filed in the above captioned matter with docket control of the Arizona Corporation Commission ("Commission") on June 5, 2009. A copy of the application was transmitted to John Foreman, designee of the Attorney General of Arizona, Terry Goddard, as Chairman ("Chairman") and Presiding Officer of the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee"). A.R.S. §§ 40-360.01(B)(1) and 40-360.03. As authorized by A.R.S. §§ 40-360.01(C) and (D), 40-360.04 and A.A.C. R14-3-201(E), the Chairman issues the following procedural order,

**IT IS ORDERED:**

1. The Applicant and all other potential parties ("persons" within the meaning of A.R.S. § 40-360(8) who intend to intervene or request to intervene pursuant to A.R.S. § 40-360.05(A)) shall advise the Chairman in writing on or before the time of the pre-hearing conference scheduled below if they disagree that the time limit for decision on the application by the Line Siting Committee set by A.R.S. § 40.360.04(D) is December 2, 2009.
2. The Applicant shall arrange for the publication and posting of notice of the evidentiary hearing, as agreed to at the pre-application hearing involving the Applicant and all known potential intervenors, in a form approved by the Chairman and circulated for approval as to form to all known potential interested parties. In addition, the Applicant shall submit a copy of the notice and present

testimony describing the publication and posting of the notice at the evidentiary hearing.

3. The Applicant shall make arrangements for the evidentiary hearing to be held at the Hampton Inn & Suites, 2000 North Litchfield Road, Goodyear, Arizona, 85395, (623) 536-1313, beginning on August 13, 2009, at 9:30 a.m. and continuing, if necessary, on August 14, 2009, at 9:30 a.m. The Applicant shall make arrangements for further regular sessions, if needed, and additional public comment sessions, if needed, on dates and at times to be determined later.
4. The Applicant shall contact Michael Kearns, Chief Finance Officer of the Commission (602-542-3931), and advise him of the Applicant's position concerning reimbursement of the Line Siting Fund should the expenses of the hearings exceed the application fee, and to discuss financial arrangements regarding hotel reservations and other expenses of the Line Siting Committee Members. A.R.S. § 40-360.10. The Applicant shall advise the Chairman of the results of these discussions so the necessary information may be communicated to the Line Siting Committee Members.
5. The Applicant and all other potential parties ("persons" within the meaning of A.R.S. § 40-360(8) who intend to intervene or request to intervene pursuant to A.R.S. § 40-360.05(A)) shall meet and confer, on or before the beginning of the evidentiary hearing to determine whether any of the intervening parties have similar interests in the application process that will allow them jointly to present testimony on direct or cross-examination of witnesses or jointly to offer exhibits into evidence. The Applicant shall, and any other potential party may, report to the Chairman the results of the attempts of the parties to resolve the issues and to determine if common interests exist that will allow parties to jointly present evidence and argument or to avoid repetition of testimony and argument at the hearing.
6. The parties and any other potential parties ("persons" within the meaning of A.R.S. § 40-360(8) who intend to intervene or request to intervene pursuant to A.R.S. § 40-360.05(A)) shall not communicate with any member of the Line Siting Committee about any procedural matters or any factual issues or legal issues relating to the Application while the Application is pending before the Line Siting Committee. The only exception is the parties may communicate with the Chairman, during the time the Application is pending, about procedural matters relating to the preparation of the Application for hearing, the hearing on the Application and the decision on the Application by the Line Siting Committee. Communication of the parties with the Chairman about any procedural matters, during the time an Application is pending, shall be in writing with a copy of the

1 writing to all parties or known potential parties ("persons" within the meaning of  
2 A.R.S. § 40-360(8) who have expressed an intention to intervene or request to  
3 intervene pursuant to A.R.S. § 40-360.05(A)), or shall be on the record at a pre-  
4 application hearing, at a procedural hearing or at the hearing on the application.  
5 Any party who initiates any written communication sent to the Chairman shall  
6 file, with docket control of the Commission, a copy of the communication,  
7 including its distribution list, within 10 days of sending the communication.

8 7. Whenever an agenda is filed pursuant to A.R.S. § 38-431.02, all parties shall  
9 submit, at least forty-eight hours before the hearing or meeting described in the  
10 agenda, any objections, additions or corrections to the agenda, in order to bring  
11 the agenda into compliance with A.R.S. § 38-431.02, in writing to the Chairman,  
12 serve a copy upon all other parties and file a copy with docket control of the  
13 Commission.

14 8. In addition, all parties shall meet and confer as needed before, during and after  
15 the hearing to attempt to resolve any disputes amongst the parties. The parties  
16 also shall keep all other parties advised of their positions and intentions with  
17 regard to the presentation of evidence, witnesses and the application process in  
18 general to avoid delay, the presentation of repetitive evidence and any unfair  
19 advantage from surprise.

20 9. All parties shall prepare brief summaries of the expected direct testimony of each  
21 witness they will call. In lieu of a testimonial summary, a party may pre-file and  
22 exchange all or substantially all of the direct testimony of any witness.  
23 Testimonial summaries and pre-filed testimony should be filed no later than the  
24 last pre-hearing conference or three business days before the witness is to  
25 testify, whichever is later. Except for good cause, no witness will be allowed to  
26 testify on direct examination concerning issues not reasonably identified in the  
pre-filed testimony or testimonial summary.

10. All parties shall meet, confer and exchange all exhibits the party plans to offer in  
evidence before the hearing or before they are referred to in testimony or offered  
in evidence. The Applicant shall, and other parties may, provide one or more  
three ring binders for the Chairman and each member of the Line Siting  
Committee to hold exhibits at the beginning of the hearing and as needed during  
the hearing. Each party shall prepare a numbered list of the exhibits and a copy  
of all exhibits suitable for placement in the binders that have been exchanged  
with the other parties that each party expects to offer in evidence at the hearing  
for the Chairman and each Line Siting Committee member. The exhibits shall be  
provided at the beginning of the hearing and during the hearing before reference

1 to the exhibit is made in the hearing. Except for good cause, no exhibit that was  
2 not exchanged with the other parties shall be considered at the hearing. Any  
3 exhibit to which reference is made during any hearing that is not offered or  
admitted into evidence shall be provided to the court reporter at the evidentiary  
hearing for inclusion in the record unless it is withdrawn, and the Chairman  
determines its filing is not necessary to an understanding of the actions of the  
Committee.

4 11. All exhibits shall be consecutively numbered with the Applicant's exhibits  
5 denominated: SEP-1, SEP-2, etc. Each intervening party will be assigned by the  
6 Chairman a letter or letters of the alphabet as a preface with which to  
consecutively number its exhibits. For example, the Commission Staff will  
number its exhibits: CC-1, CC-2, etc.

7 12. The Applicant may make an opening statement at the beginning of the hearing of  
8 no more than thirty minutes. Each other party may make an opening statement  
9 of no more than five minutes.

10 13. Public comment will be heard after the opening statements and at other times set  
11 by the Chairman during the hearing. See ¶ 3, above.

12 14. In the event the Chairman determines that a tour is appropriate, the Applicant  
13 shall arrange for transportation of any Committee Members who wish to attend a  
14 tour of the locations where facilities proposed in the application or similar facilities  
15 are located. If a tour is held, the Applicant shall submit to the Chairman, for  
16 approval in advance of the hearing, a schedule and protocol agreed to by all  
17 parties for the tour. If all parties do not agree upon the schedule and protocol for  
18 the tour, the disagreements shall be submitted to the Chairman for resolution.  
19 The protocol shall identify the tour route, identify the location of any stops, and  
20 identify any witnesses who will accompany the tour. Counsel may ask brief  
21 explanatory questions of the identified witness or witnesses during the stops  
22 about the location, what can be seen from the location of the stop and the  
23 relevance of the location or view to the Application in the discretion of the  
24 Chairman. All witnesses who testify on the tour shall be sworn before their  
25 testimony. All questions and answers shall be before a court reporter. No  
26 testimony or discussion with or between Committee Members about the  
Application or matters relating to the Application will take place, except on the  
record before a court reporter at the designated stops. The protocol shall provide  
for access to any testimony presented at stops on a tour to members of the  
public. Members of the public who wish to attend the tour shall be encouraged to  
notify the parties or the appropriate staff of Arizona Corporation Commission in  
advance of their intention to attend.

15. Parties may present their witnesses in panels where appropriate. A party that intends to present witnesses in panels shall identify the members of any panel at the time it files its witness summaries.

16. The Applicant shall make arrangements for the preparation of expedited court reporter transcripts of all pre-application hearings, pre-hearing procedural hearings and the evidentiary hearing, so that the transcripts are available for public inspection within three working days after each hearing date, as required by A.R.S. § 38-431.01D and § 40-360.04C. In addition, the Applicant shall file a certification with Commission docket control that it has provided a copy of the transcripts to at least two public libraries identified in the certification that are in the vicinity of the application.

17. On or before the final pre-hearing procedural hearing set below, the Applicant shall, and the other parties may, file proposed findings of fact, proposed conclusions of law, the wording of any proposed Certificate of Environmental Compatibility and the wording of any proposed conditions to the Certificate.

18. If the beginning of closing arguments and the Line Siting Committee's deliberations are more than one week after the beginning of the hearing, the parties shall meet and confer after the hearing begins and before closing arguments concerning proposed findings of fact, proposed conclusions of law, a proposed Certificate of Environmental Compatibility and the wording of any proposed conditions to the Certificate. If the parties are able to agree upon part or all of the proposed findings of fact, proposed conclusions of law, proposed forms of a Certificate of Environmental Compatibility and proposed wording of conditions to the Certificate, all that is agreed upon should be reduced to writing and filed with Commission docket control. If the parties are not able to agree completely, the Applicant shall, and all other parties may, file proposed findings of fact, proposed conclusions of law, proposed wording of a Certificate of Environmental Compatibility and proposed wording of conditions to the Certificate on the day before the beginning of closing arguments and the Line Siting Committee's deliberations.

19. If the Applicant or any other party proposes conditions based upon conditions used in prior cases, each proposed condition from a prior case shall contain the case number of the most recent prior Certificate of Environmental Compatibility using the language approved by the Commission.

20. All witness summaries, proposed findings of fact, proposed conclusions of law, proposed Certificates of Environmental Compatibility and proposed conditions of Certificates, shall be filed with Commission docket control pursuant to A.A.C. R14-3-204 and -205. If any documents that are filed are hand delivered during

the hearing, eleven copies shall be submitted to the Chairman for distribution to the other Committee Members.

21. Within five business days after the hearing concludes and the Committee renders its decision, the parties shall meet and confer in person or electronically to determine if they can agree upon the final wording of a proposed Certificate of Environmental Compatibility. If the parties can agree upon the final wording of a proposed Certificate of Environmental Compatibility, Applicant shall file forthwith the agreed upon proposed Certificate of Environmental Compatibility to the Chairman for signature. If the parties are not able to agree upon a proposed form of Certificate of Environmental Compatibility, the Applicant shall file, and the other parties may file, within ten days after the date of the decision of the Committee, those portions of the proposed Certificate of Environmental Compatibility upon which the parties agree. The Applicant also shall file, and any other party also may file, its understanding of any disputed portions of the proposed Certificate of Environmental Compatibility. All proposed forms of the Certificate of Environmental Compatibility and any objections or proposed revisions shall be filed with docket control of the Commission, and a copy shall be hand delivered to the office of the Chairman at 1275 W. Washington, Phoenix, Arizona. Objections or suggestions that are not timely filed shall be considered waived. The copy of the proposed Certificate of Environmental Compatibility filed by the Applicant and any proposed revisions filed by the parties that are served upon the Chairman shall include an electronic file containing the wording of the proposed language in a format compatible with Microsoft® Word word processing program.

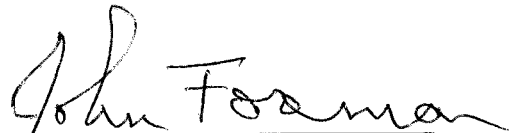
22. The Applicant and all other potential parties ("persons" within the meaning of A.R.S. § 40-360(8) who intend to intervene or request to intervene pursuant to A.R.S. § 40-360.05(A)) shall meet with the Chairman for a final pre-hearing conference on August 3, 2009 beginning at 2:00 pm at the offices of the Attorney General of Arizona at 1275 W. Washington, Phoenix, Arizona. Parties other than the Applicant may appear by telephone with the prior permission of the Chairman. At the final pre-hearing conference, the Chairman will review with the parties:

- a. The publication and posting of notices of the hearing;
- b. The proposed agenda for the evidentiary hearing;
- c. Any notices to intervene, applications to intervene, and applications to make a limited appearance;
- d. The status of attempts to narrow the issues at the evidentiary hearing or to agree to language in the proposed findings of fact, proposed conclusions of law, proposed Certificates of Environmental Compatibility and proposed conditions to the Certificate;

- 1 e. The status of the filing and exchange of witness summaries or written  
2 testimony, proposed findings of fact, proposed conclusions of law,  
3 proposed Certificates of Environmental Compatibility and proposed  
4 conditions to the Certificate;  
5 f. The status of the exchange of exhibits amongst the parties;  
6 g. Any objections, motions, responses and legal memoranda that have been  
7 filed;  
8 h. Plans and preparations for the hearing, public comment session, and tour  
9 of the proposed site.

10  
11 IT IS FURTHER ORDERED, the Chairman may amend or waive any portion of  
12 this Procedural Order by subsequent Procedural Order, by ruling at a pre-hearing  
13 conference or at a hearing.

14 DATED this 11<sup>th</sup> day of June, 2009

15 

16 John Foreman  
17 Assistant Attorney General  
18 Chairman  
19 Arizona Power Plant and Transmission  
20 Line Siting Committee  
21 [john.foreman@azag.gov](mailto:john.foreman@azag.gov)

22 Pursuant to A.A.C. R14-3-204,  
23 The Original and 25 copies were  
24 filed this 11<sup>th</sup> day of June, 2009 with:

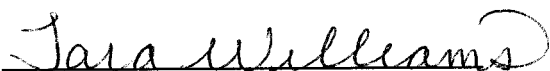
25 Docket Control  
26 Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

1 Copy of the above mailed  
2 this 11<sup>th</sup> day of June, 2009 to:

3 Janice Alward, Chief Counsel  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, AZ 85007  
7 Counsel for Legal Division Staff

8 Steven A. Hirsch  
9 Andrew D. Gleason  
10 Bryan Cave LLP  
11 2 North Central Avenue, Suite 2200  
12 Phoenix, AZ 85004  
13 Counsel for Applicant, SEP-II

14 Marta T. Hetzer  
15 Arizona Reporting Service, Inc.  
16 2200 North Central Avenue  
17 Phoenix, AZ 85004-1481

18   
19  
20  
21  
22  
23  
24  
25  
26